

## **IV.**

### **REVISIONS UNDER STUDY**

#### **1. Family Law Standing Committee**

Chairman: Dean Noah Funderburg  
Reporter: Penny Davis

In 2013, the Family Law Standing Committee was formed to begin a systematic review of family law. At the initial meeting, the committee formulated and prioritized a list of issues to be considered.

Three bills will be presented to the Legislature during the 2015 Regular Session. They are a new Grandparent Visitation, a Deployed Parents Custody and Visitation Act and the Division of Retirement Benefits Upon Divorce Act.

The committee is currently drafting a new alimony statute. The committee is also studying several other potential family law areas for future revision including custody, parenting plans, common law marriage and gestational agreements.

#### **2. Standing Trust Committee**

Chairmen: Leonard Wertheimer & Ralph Yielding  
Reporter: Fred Daniels

In 2012, the Law Institute created a Standing Trust Committee to assist the Alabama Legislature in staying abreast of the evolving changes in the area of trust law. The first area addressed by the committee was the development of a unitrust law for Alabama. In 2013, the Legislature adopted a committee recommendation and enacted a bill that updated the Alabama Principal and Income Act to provide for the establishment of unitrusts in Alabama.

The committee is presenting to the Legislature for consideration during the 2015 session a statute that will invalidate certain aspects of trust agreements, such as beneficiary designations upon divorce.

The committee is beginning a study on asset protection trusts. We anticipate this review will take several months to complete.

**3. Real Estate Study Committee**

Chairman: John Plunk

Reporter: Robert L. McCurley

The Real Estate Standby Committee was formed to review various real estate acts for possible recommendation to the Alabama Legislature. There are several areas of real estate law that have been studied by the National Conference of Commissioners on Uniform State Laws. These studies have resulted in the recommendation of several acts. Among those recommended by the Uniform Commissioners and studied by the committee are:

A. Uniform Conservation Easement Act  
(passed 2007, effective date January 1, 2008)

B. Ad Valorem Tax Sales (Passed 2009,  
effective date September 1, 2009)

C. Uniform Real Property Electronic Recording  
Act(Passed 2009, effective date January 1, 2010)

D. Rule Against Perpetuities (Passed 2011,  
effective date January 1, 2012)

E. Amendments to the Alabama Condominium  
Act (review began 2010) (*See item 7: Amendments  
to the Condominium Act*)

**4. Nonprofit Corporation Act**

Chairman: L. B. Feld

Reporter: Professor James Bryce

Alabama's Model Nonprofit Act was adopted in 1984 and followed the 1964 Model Nonprofit Act drafted by the American Bar Association. Since that time, the Nonprofit Act has twice been revised by the American Bar Association with the third edition adopted in August 2008.

The Institute committee was formed in 2007 to begin a review of the new act drafted by the ABA. The act is divided into 17 Chapters. The committee has reviewed the act and made a number of changes to conform the act to Alabama practices.

Subsequent to the passage of the Alabama Business and Nonprofit Entities Code in 2009, the committee has reviewed the Nonprofit Act in light of the need to make changes to incorporate the new Nonprofit Corporation Law into the Alabama Business and Nonprofit Entities Code. The committee is working to ensure that the changes in the Model Act recommended by the American Bar Association are compatible with Alabama's new Alabama Business and Nonprofit Entities Code, effective 2011. All revised entities will become a part of the Entities Code.

**5. Alabama Criminal Code Review**

Chairman: Howard Hawk

Reporter: Bill Bowen

The Alabama Criminal Code became effective in 1980. Since that time there have been numerous amendments, additions, and changes. A new Criminal Code committee was formed in 2009.

The original 1980 Criminal Code was compared with the current law showing line through and underlined changes during the past 30 years. The Committee is undertaking a systematic review of the entire criminal code, classification system and sentencing structure.

This review will be conducted with the goal of ensuring the criminal code is as effective and efficient as possible. The committee is reviewing the chapters one at a time. It is anticipated that this review will take several years to complete.

**6. Business Entities Standing Committee**

Chairman: Jim Wilson

In 2012, the Institute formed a standing committee on Business Entities (Title 10A) to address issues related to the adoption and implementation of Title 10A and to discuss developing issues related to business entities as they arise. The initial concern for the committee was to review and update the Name Reservation provisions in light of new technology advances. A bill to amend the Business Entities Code on name reservations was passed by the Legislature in 2013.

In the 2014 session, the legislature passed amendments relating to Mergers and Conversions. In the 2015 session, the committee will be submitting amendments to the LLC Act. The committee's current study is of the Model Business Corporation Act. It is anticipated that this study will take several years.

**7. Condominium Act Amendments**

Chairman: John Plunk

Reporters: Carol Stewart

Melinda Sellers

Alabama's Condominium Act was passed in 1990 and is located in Chapter 8A of Title 35 of the Code of Alabama. During the past 21 years several issues have been raised needing clarification. Listed below is a summary of the issues addressed by the amendments.

1. Section 35-8A-102(c) was amended to clarify when an offering statement is required for sales of units in condominiums located outside of Alabama which are sold to Alabama residents.
2. The amendment to § 35-8A-103(4) recognizes that easements and other interests in real property can be a common element.
3. The amendment to § 35-8A-103(11) identifies the development right to convert common elements to units when reserved in the declaration.

4. The amendment to § 35-8A-105(c) recognizes that some property subject to development rights can not be separately assessed and taxed.
5. The amendment to § 35-8A-107(c) requires that any portion of an award attributable to condemnation of limited common elements be divided among the owners in accordance with the value of the interest in a particular limited common element assigned to the units rather than requiring the amounts to be equally divided among the unit owners.
6. Section 35-8A-201(b) was amended to delete the requirement of maintenance of a condominium book by the judge of probate in each Alabama county.
7. Section 35-8A-201(c) was amended to clarify that a declaration or an amendment to the declaration is not effective until there is substantial completion of the structural and mechanical systems in the buildings located on the property being submitted to the condominium form of ownership. The amendment to § 35-8A-210(c) also removes the requirement that the engineer or architect certify that the structural and mechanical systems of all buildings were "completed in accordance with the plans."
8. Section 35-8A-208(a) was amended to require the association's consent for limited common element reallocations.
9. The amendments to § 35-8A-209(b) were substantially revised to require all information to be included on the plat to the extent such information could be shown on a two dimensional page, showing the subdivision of land and reciprocal rights relating to the subdivision.
10. The amendments to § 35-8A-209(d) eliminate the requirement of showing development

rights to subdivide if such rights are described in the declaration.

11. Section 35-8A-(209)(g) was amended to allow a licensed surveyor to provide the required certification. This change expands the prior law which provided that only a licensed engineer or architect could certify to a plat.